

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION**

UNITED STATES OF AMERICA)
)
v.) Case No. CR696-004
)
DONNELL SUMMERSETT)

REPORT AND RECOMMENDATION

Defendant Donnell Summersett seeks leave to proceed *in forma pauperis* (IFP) on his appeal of this Court's decision to deny his 28 U.S.C. § 3582(c)(2) sentence reduction motion. Doc. 957. Despite his apparent poverty, however, “[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). A defendant's good faith is demonstrated when he seeks appellate review of any issue that is not frivolous. *United States v. Alvarez*, 506 F. Supp. 2d 1285, 1290 (S.D. Fla. 2007), *citing Coppedge v. United States*, 369 U.S. 438 (1962). Hence, an IFP application may be denied “if it appears -- objectively -- that the appeal cannot succeed as a matter of law.” *Id.*, *citing DeSantis v. United Technologies Corp.*, 15 F. Supp. 2d 1285, 1289 (M.D. Fla. 1998), *affd*, 193 F.3d 522 (11th Cir.

1999). Further, a case is frivolous for IFP purposes if it appears there is “little or no chance of success.” *Id.*, citing *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993).

Here, the district judge, exercising his discretion, reduced Summersett’s sentence under the Fair Sentencing Act of 2010, Pub. L. 111-220 from “Life” to “360 months to Life.” Doc. 933, *reconsideration denied*, doc. 946. That evidently was not to defendant’s satisfaction (he has appealed, doc. 949). But Summersett has not offered any facts or argument suggesting that the decision was an abuse of discretion. Hence, his appeal is not taken in good faith under 28 U.S.C. § 1915, so his IFP motion should be **DENIED**. Doc. 957.

SO REPORTED AND RECOMMENDED, this 9th day of April, 2012.



UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA